

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

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SILVIO DE VARGAS NUNEZ,

Plaintiff,

-against-

NASSAU COUNTY PRISON;
RONALD ROGERS, Warden,

Defendants.

MEMORANDUM
AND ORDER

06-CV-0399 (ERK)

FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.

★ MAR 22 2007 ★

BROOKLYN OFFICE

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KORMAN, J.:

Plaintiff, appearing *pro se*, brings the instant action against defendants pursuant to 42 U.S.C. § 1983, seeking a refund of money paid as bail on his behalf to obtain his release from Nassau County Prison. By order dated November 2, 2006 (the "November Order"), I identified the deficiencies in plaintiff's complaint and directed him to amend his complaint within 60 days. Nunez v. Nassau County Prison, et al., 06-CV-0399 (ERK), slip op. at 3-4 (E.D.N.Y. Nov. 2, 2006). On December 11, 2006, plaintiff submitted an application for appointment of counsel and a motion for an extension of time to file an amended complaint. By order dated January 8, 2007, I denied plaintiff's request for counsel and granted him until March 7, 2007 to file an amended complaint as directed by the November Order. Nunez, 06-CV-0399 (ERK), slip op. at 1 (E.D.N.Y. Jan. 8, 2007). On February 28, 2007, plaintiff filed a submission captioned "Plaintiff's Legal Declaration in Support to Amend his Complaint" ("Mot."), which is now before me. In his recent submission, plaintiff requests that I reverse my decision denying his request for counsel and grant him additional time to file an amended complaint. See Mot. ¶¶ 3, 5, 7-8, 13.

A. Appointment of Counsel

Plaintiff does not present any additional arguments not previously considered by me in denying his request for appointment of counsel. As I previously held, plaintiff's request for appointment of counsel must fail, as he has not demonstrated that his complaint is of likely merit. Nunez, 06-CV-0399 (ERK), slip op. at 1 (E.D.N.Y. Jan. 8, 2007) (citing Ferrelli v. River Manor Health Care Ctr., 323 F.3d 196, 204-05 (2d Cir. 2003)). Therefore, I deny plaintiff's motion for reconsideration of my order denying him appointment of

counsel.

B. Leave to Amend

I do, however, grant plaintiff's request for additional time to submit an amended complaint as directed by the November Order. In the November Order, I directed plaintiff to describe how he has attempted to retrieve his bail money from the Nassau County Treasurer's Office, as his failure to have done so would require dismissal of his complaint. See Nunez, 06-CV-0399 (ERK), slip op. at 3-4 (E.D.N.Y. Nov. 2, 2006) (citing Logan v. Zimmerman Brush Co., 455 U.S. 422, 436 (1982)). Plaintiff attaches to the instant submission a letter dated March 8, 2006 which he allegedly sent to the Nassau County Treasurer's Office and in which he inquires about the refund of the bail money paid on his behalf. Plaintiff does not allege whether he received a response to his letter or whether he made any subsequent effort to retrieve the bail money from the treasurer's office. Accordingly, I find that plaintiff's allegations remain insufficient to proceed with this action and grant him additional leave to file an amended complaint.

CONCLUSION

I hereby direct plaintiff to submit an amended complaint as directed by the November Order within 60 days of the date of this Order. In addition, I caution plaintiff that I will not grant any further extensions. If plaintiff fails to comply with this Order within the time allowed, the complaint shall be dismissed.

I certify pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

s/Edward R. Korman

Edward R. Korman
United States District Judge

Dated:

Brooklyn, New York

3/21/07